



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2005

Ms. April M. Virnig
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2005-04626

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224986.

The City of Azle (the "city"), which you represent, received a request for information regarding all incidents involving the fire department, the police department, or emergency medical services ("EMS") and a named apartment complex during a specified time period. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides as follows:

¹We assume that, to the extent any additional responsive information existed on the date the city received this request, such information has been released to the requestor. If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). The reports submitted as Tab B involve juvenile conduct occurring after September 1, 1997. It does not appear that any of the exceptions in section 58.007 applies. Therefore, Tab B is confidential in its entirety pursuant to section 58.007(c) of the Family Code. Accordingly, the city must withhold Tab B under section 552.101 of the Government Code as information made confidential by law.²

Next, you assert that the Medical Practice Act (the “MPA”), chapter 159 of the Occupations Code, governs release of the information in Tab D. Section 159.002 of the MPA provides in relevant part:

- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Upon review, we find that you have not explained how this information constitutes records created or maintained by a physician; therefore, the city may not withhold any portion of Tab D on that basis.

²As we are able to make this determination, we need not address your remaining arguments against disclosure for this information.

We note that the submitted information includes EMS records. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See Open Records Decision No. 598 (1991).* Section 773.091 provides in relevant part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services

Health & Safety Code § 773.091(b), (g). It does not appear that any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply in this instance. Accordingly, we conclude that, except as specified by section 773.091(g), the city must withhold the EMS records we have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

You claim that portions of the remaining information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Accordingly, we agree that the city must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the city must withhold Tab B under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Except as specified by section 773.091(g), the city must withhold the EMS records we have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. The Texas motor vehicle record information you have marked must be withheld under

section 552.130 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caroline E. Cho', with a long horizontal flourish extending to the right.

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 223986

Enc. Submitted documents

c: Mr. William Anness
637 Lake Crest Parkway
Azle, Texas 76098
(w/o enclosures)